

REMARKS

In the Office Action, claims 1, 2, 5, 8, 10, 21-24, 27, 28, 30 and 32 were rejected, claims 3, 9, 11, 25, 26, 29, 31, 33 and 34 were objected to, but indicated as containing allowable subject matter, and claims 6, 7, 12-20 and 35-39 were allowed. Applicants wish to thank the Examiner for the indication of allowed claims. Claims 3, 9, 11, 25, 26, 29, 31, 33 and 34 have been amended to place those claims in independent form. Clarifying amendments have been made to claims 1, 8, 10, 21, 23, 28, 30 and 32. In addition, new dependent claims 40-42 are submitted. No new matter has been added. Entry of the amendments is respectfully requested. Claims 1-5, 8-11, 21-34 and 40-42 are submitted for examination on the merits.

In the Office Action, the drawings that were filed with the application were objected to and Applicants respectfully traverse both portions of the objections to the drawings. The first portion objects to Figs. 1-28 for not being designated by a legend such as "Prior Art." However, the specification of the instant application makes clear that embodiments of the invention are illustrated in Figs. 1-28. It is not clear why they should be indicated as being prior art and thus, Applicants respectfully traverse this objection and request that the Examiner provide some rationale as to why she believes that they should be so labeled.

The second portion of the objections to the drawings alleges that "the percutaneous probe with non-linear shape, as claimed in claim 6, is not illustrated in the drawings. Applicants respectfully traverse that portion as well. As described in paragraph [0121] of the instant specification: "the percutaneous probe 2934 can have a generally straight, linear shape when deployed, and (except for a terminal portion 2929), a generally curved or arcuate shape when it is stowed within the housing 2940, as shown in Figure 29A." Examination of Fig. 29A illustrates

the curved or non-linear shape and Applicants respectfully traverse that portion of the requirement as well. Reconsideration and withdrawal of the objections to the drawings are respectfully requested.

Claims 1, 2, 5, 8,10, 21-24, 27, 29, 30 and 32 were rejected under 35 U.S.C. §102(b) as being anticipated by *Bodicky et al.* (U.S. Patent No. 4,895,147). Claims 1, 2, 5, 8,10, 21-24, 27, 29, 30 and 32 were rejected under 35 U.S.C. §102(b) as being anticipated by *Harding* (U.S. Patent No. 5,613,978). Claims 1 and 8 were rejected under 35 U.S.C. §102(e) as being anticipated by *Rutynowski et al.* (U.S. Patent No. 6,613,064). Claims 1, 2, 4 and 8 were rejected under 35 U.S.C. §102(e) as being anticipated by *Roe* (U.S. Patent No. 6,645,219). Applicants note that the first two rejections reject claim 29 without rejecting claim 28, where claim 28 depends from claim 29, and Applicants believe that the Office Action mixed up those claims, i.e. the Examiner intended to reject claim 28. Those rejections are further discussed below.

Bodicky et al. is directed to an improved lancet injector having an elongate tubular housing and a penetration depth selector thereon. The lancet guide further includes a flexible plunger to create a vacuum in one end of the injector after the patient's skin has been pierced to assist in drawing blood from the puncture site by manually moving the lancet guide from a neutral position to a vacuum position. There is no disclosure in *Bodicky et al.* of using the lancet as a probe for electrotherapy.

Harding is directed to an adjustable tip for a blood lancet device for causing different depths of skin puncture. An inner sleeve has a partially enclosed distal end which forms a stop for the shoulder of the lancet, creating an adjustable double bottom which creates various puncture depths. There is no disclosure in *Harding* of using the lancet as a probe for

electrotherapy.

Rutynowski et al. is directed to an arrangement for regulating the depth of a puncture including a sleeve, a button placed at one end of the sleeve, a piston with a puncturing tip that is slidably mounted within the sleeve, and a power spring placed between the front of the button and the piston. There is no disclosure in *Rutynowski et al.* of using the lancet as a probe for electrotherapy.

Roe is directed to an arrangement of interfitting components for adjusting the penetration depth of a lancet and for stimulating an area surrounding an incision formed by penetration of a surface of the skin by the lancet, thereby facilitating the extraction of a sample of bodily fluid with a minimally invasive incision. There is no disclosure in *Roe* of using the lancet as a probe for electrotherapy.

In each of the rejections, the lancet references have been applied to the percutaneous application claims. Although not explicitly acknowledged in the rejections, the Office Action has found the “percutaneous probe” limitation to read upon the lancets disclosed in the prior art references. As used in the specification, in many applications, the probes are percutaneous probes used in electrotherapy. None of the cited references apply to percutaneous probes used in electrotherapy.

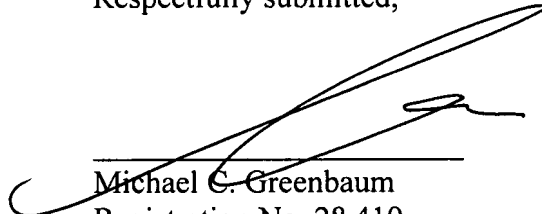
Claims 1, 8, 10, 21, 23, 28, 30 and 32 have been amended to explicitly recite that the probes are probes used in electrotherapy. As such, Applicants respectfully assert that *Bodicky et al.*, *Harding*, *Rutynowski et al.* and *Roe* cannot anticipate those claims and the rejection of those claims must be improper. Reconsideration and withdrawal of the rejections of independent claims 1, 8, 10, 21, 23, 28, 30 and 32 are respectfully requested.

Claims 2, 4, 5, 22, 24 and 27 should likewise be allowed for at least their dependence on the independent claims 1, 21 and 23. Claims 3, 9, 11, 25, 26, 29, 31, 33 and 34 have been amended to place those claims in independent form and should now be allowed. Claims 6, 7, 12-20 and 35-39 were previously allowed. Claims 40 and 41 are dependent on allowable claim 3, and claim 42 is dependent from allowable claim 26. The unallowed claims 1-5, 8-11, 21-34 and 40-42 should now be allowed.

For the reasons set forth above, the Applicants respectfully submit that the application as amended is in condition for allowance. Notice of such allowance is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application into better condition for allowance, the Examiner is invited to contact the Applicants' attorney at the telephone number listed below.

Please charge any shortage of fees, or credit any overpayment thereof, to BLANK ROME LLP, Deposit Account No. 23-2185 (000309-00259). In the event that a petition for an extension of time is required to render this Amendment timely, and in the event that a separate petition either does not accompany this Amendment or is insufficient to render this Amendment timely, the Applicant hereby petitions under 37 C.F.R. § 1.136(a) for an extension of time for as many months as are required to render this Amendment timely. Any fee due is authorized above.

Respectfully submitted,



Michael C. Greenbaum
Registration No. 28,419
Attorney for Applicants

BLANK ROME, LLP
600 New Hampshire Avenue, N.W.
Suite 1100
Washington, D.C. 20037-2485
(202) 772-5800 (Phone)
(202) 772-5858 (Facsimile)